ATTACHMENT A

Seattle
Community
Police Commission

Our city. Our safety.
Our police. Better together.

October 29, 2018

Dear Judge Robart,

I. Introduction

The Court asked the parties, and invited the Community Police Commission (CPC), to comment on:

1. The process and timeline by which the tentative agreement (TA) between the City of Seattle with the Seattle Police Officers Guild (SPOG) will be finalized;
2. Next steps if the TA is not finalized;
3. The parties' preliminary positions on whether the TA complies with the terms and purpose of the Consent Decree; and
4. The point when the Court should review any agreement between the City and SPOG to ensure compliance with the Consent Decree, and the process for such a review.[1]

The CPC appreciates the opportunity to comment. We address the second, third, and fourth questions below.

II. Whether the TA complies with the Consent Decree

The CPC offers these comments as the entity charged under the 2012 Memorandum of Understanding (MOU) between the City and the Justice Department with primary responsibility to assess Seattle's police accountability structures and propose improvements that would foster community confidence.[2] To fulfill that obligation, we committed thousands of hours studying Seattle's current system, making an inventory of national best practices, reviewing known problems here, and devising solutions that could work for everyone, including officers and SPD command staff.[3] The CPC logged innumerable sessions consulting with all local stakeholders, including SPD and its union representatives on the CPC, and have repeatedly offered accountability improvements that both advance the interests of the communities we represent, and also are designed to respect the rights, needs and interests of SPD's command staff and rank and file employees.

This delicate balance among interests too often thought to be at odds is undone by the proposed TA. We were dismayed to see community priorities set aside at the bargaining table, in favor of measures that apparently

[1] Dkt. No. 485 at 2.
[2] MOU § III.C.2.i.15 at 4–5. *See generally* Dkt. No. 346-1 at 2–3.
[3] *E.g.*, Community Police Commission Accountability Recommendations (Apr. 24 & 30,2014). The CPC's recommendations relating to accountability can be accessed at https://www.seattle.gov/community-police-commission/recommendations-and-reports.

were more palatable to SPOG and/or expedient to City leadership. This has been the story for decades and is always a possible outcome of collective bargaining, where (a) the City is represented by negotiators who don't always center their approach on those most affected by policing, (b) police officers are represented by their union, and (c) the community remains on the outside looking in. Even so, we hoped this time would be different because of the Consent Decree spotlight, efforts to build partnership with SPOG, community consensus around the approach taken by the CPC, and vocal support from officials who publicly embraced the accountability legislation. This hope was proven misplaced.

The TA substantially deviates from the accountability system improvements of the 2017 Accountability Ordinance. Appendix A is a chart preliminarily describing some, but not all, of these deviations. The CPC will submit a more comprehensive analysis when the Court sets the process for reviewing the TA.

The improvements the TA compromised or left on the table are important, and they addressed lessons learned over many years about problems in the existing system. Many of the flaws were identified by the OPA Auditor, whose position community leaders and blue-ribbon panel experts had fought for and won. The OPA Auditor's role became more critical over time, yielding valuable insights about how actual and perceived accountability failures damaged community trust, and how they should be remedied.

The CPC proposals to improve the accountability system were intended to inform the City's agenda for upcoming bargaining.[4] These recommendations were issued in 2014, before bargaining on the SPOG TA began, so as to not constitute an unfair labor practice. The proposals reflected important contribution that our diverse communities have made to the police reform process, one that many invested in and that Seattle's political leaders repeatedly and rightly held out as important to community trust.

We recognized some of the CPC-proposed reforms were subject to collective bargaining.[5] We expected them to be prioritized by the City in negotiations. When this did occur, with the 2017 Seattle Police Management Association (SPMA) contract, CPC members spoke in support of the agreement,[6] even though negotiations resulted in important concessions—most notably, with respect to the post-disciplinary appeal process. But the SPMA contract deviated from the Accountability Ordinance in comparatively few respects, and contained language that explicitly accepted the Accountability Ordinance in whole, except where bargaining resulted in specific changes. This nearly global acceptance allowed the CPC to tell the communities we represent that the bulk of the accountability improvements we had worked for had been preserved.

The SPOG TA takes a different approach. It provides that, if there is any conflict between the law and the contract (including the appendices to the contract), the contract will prevail.[7] Because a conflict may arise even from the omission of ordinance language in an area expressly covered by the contract, the TA threatens

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[4] *See id.*

[5] *See, e.g.*, Dkt. No. 346-1 at 3–4.

[6] CPC Letter to Council, Nov. 14, 2017 ("The overall alignment in contract priorities demonstrates the willingness of SPMA to work with the City and should serve as an example to the Seattle Police Officers' Guild as it negotiates its contract."), available at https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/111417_Letter_to_Council_re_SPMA_Contract_FINAL.pdf.

[7] TA art. 18.2, and App. E. § 3.

to eviscerate the ordinance with respect to accountability. This TA provision feeds into longstanding fears that community priorities would be gutted in the SPOG contracting process.

A small but telling example illustrates this. When we proposed our 2014 package of accountability improvements, we were aware that many community members identified OPA with the police department and lacked confidence that a complaint made at and to the police department would be handled fairly and without risk of retaliation. One of many changes to address this concern was to not house OPA in an SPD facility.[8] The TA, however, provides that all OPA interviews of SPOG members in the course of an investigation shall be conducted at an SPD facility.[9] In light of the ordinance provision establishing that OPA is not housed in an OPA facility, a logical reading of the TA is that OPA may not interview officers at OPA, which would significantly compromise OPA's efficacy as well as its appearance of independence.

City officials have told us that SPOG privately assured them this provision does not mean what its plain language clearly conveys, and that SPOG understands that officers will continue to be interviewed at OPA. If true, this is both a public transparency issue—in which the TA doesn't mean what it plainly says—and a potential "ace in the hole" appeal issue when the union challenges discipline imposed in an individual case. If interviews of SPOG members indeed are conducted at OPA, from an arbitrator's perspective, that could be seen as a flagrant violation of rights of officers under the contract.

We reviewed the letters from Inspector General Lisa Judge and the Director of the Office of Police Accountability Andrew Myerberg to Councilmember Lorena Gonzalez, outlining their analyses of the TA's impact on their ability to perform their functions. We largely concur with Inspector General Judge and Director Myerberg in their assessments of the mixed implications for their offices. However, outside the scope of their analysis is the impact of the TA *on the accountability system as a whole*, including transparency to the public, and the ability of the Chief of Police to effectively uphold reform values as she leads her department. These are heavily compromised by the TA, in ways many in the community have long predicted and that we sought to avoid.

As the Court, Monitor and United States have observed many times, Seattle's police accountability structures by and large lie outside the scope of the Settlement Agreement overseen by this Court.

That said, the purpose of the Consent Decree is to "ensur[e] that police services are delivered to the people of Seattle in a manner that fully complies with the Constitution and laws of the United States, effectively ensures public and officer safety, *and promotes public confidence in the Seattle Police Department ('SPD') and its officers*."[10] Both the Consent Decree and the MOU speak of the importance of a system that both police officers and the public can trust to be fair, impartial, effective, timely, and transparent.[11] Moreover, the Monitor Team and the City Attorney both have noted concerns with and an interest in the police accountability system.[12]

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[8] Ordinance 125315, § 3.29.105(A) ("OPA shall be physically housed outside any SPD facility and be operationally independent of SPD in all respects.").
[9] TA art. 3.12.C.3
[10] Dkt. No. 3-1 at 5 (track changes).
[11] E.g., id. at 50:11–14; MOU I.1, III.3.
[12] Dkt. No. 154, Monitor's Third Semiannual Report at 77 ("Although the whole of the discipline system will likely need to be overhauled …."); Pete Holmes: Why I Settled the Whitlatch Case (Sept. 2, 2017) ("As I have reiterated during the course

One aspect of the TA arguably contravenes an earlier order of this Court[13]—the TA introduces an elevated standard of review for termination of SPD employees, where the termination is on grounds which could be stigmatizing to officers seeking employment elsewhere.[14] This provision may be contrary to the Court's order that the City not use an enhanced burden of proof concerning an officer's possible termination for dishonesty. While dishonesty is now treated the same as other potential grounds for termination, the bargained-for standard of review for terminations is now elevated, which effectively also elevates the Chief's standard for termination across the board. Instead of leveling down the standard for termination for dishonesty, the TA levels up the standard for termination for many other kinds of misconduct including dishonesty.

More globally, in our view, the TA and its failure to prioritize and safeguard much of the progress made in the Accountability Ordinance compromise the core values and objectives of the Consent Decree, namely, transparency and promoting public confidence in the oversight mechanisms governing policing in Seattle. The CPC agrees that "police reform" is broader than improving formal accountability processes. But, given the public's focus on accountability as a safeguard against the sort of abuse of police power we have seen in the past, the integrity of the police accountability system is critical.

Although the CPC finds the TA to have frustrated the expectations of many key community leaders, we understand it is up to Seattle's political leaders to make good on their assurances to the public over the past four years that they would advance the CPC's accountability proposals and the 2017 legislation. We understand that, regrettably, the Court likely cannot make this happen except at the margins.

IV. Next Steps If TA Is Not Finalized

We believe it is in the interests of the City and SPOG to jointly seek a solution short of impasse and arbitration. A way forward could be to agree to finalize the agreement with the addition of an immediate re-opener for matters touching on the accountability system. This approach allows the rest of the TA to take effect without delay, including important wage adjustments for SPOG members, while accountability-related provisions are addressed. The CPC (along with, presumably, the OPA and OIG) stands ready to work with the parties in the capacity of technical advisor, consistent with the ordinance.[15] Following re-opener bargaining in which accountability partners are fully engaged, the CPC would be in a better position to vouch for the overall balance struck by the collectively bargained agreement.

V. Timing and Process for Court Review

It would be appropriate for the Court to assess the results of bargaining once the contracting process concludes (after City Council action). In the past, the Court has stated it would evaluate provisions in the

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of SPD's five-year, federally-monitored reform process, the City must regain its ability to manage, discipline, and hold officers accountable without the impediments that have been inserted into collective bargaining agreements over the years. This case demonstrates the vital importance obtaining of new agreements with our police unions that fully embrace reforms achieved through the Consent Decree."), available at < https://news.seattle.gov/2017/09/01/pete-holmes-why-i-settled-the-whitlatch-case/>.

[13] Dkt. No. 357 at 6–8.

[14] TA art. 13.1.

[15] Any technical advisor must comply with requirements for confidential bargaining. The CPC does not advocate for "open bargaining."

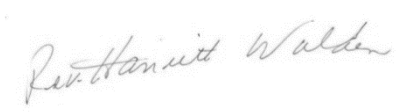
accountability legislation to determine if they (1) comply with the Constitution; (2) allow the police to be effective; and (3) are credible in the community[16]

VI. Conclusion

Many have labored for years to reform policing in Seattle. Under the Consent Decree, Seattle has had an unparalleled opportunity to address longstanding serious policing problems. We acknowledge with appreciation the many contributions of SPOG members to reform efforts, making possible the Court ruling in January 2018 that the City is "in full and effective compliance with the Consent Decree."[17] Although many aspects of the police accountability system were not within the scope of the Consent Decree, an important purpose of the Consent Decree was to take steps to ensure public confidence. The City should resolve now to not only comply with specific commitments of the Consent Decree, but also with its intent to ensure that not only policing, but also the police accountability system, fully address past problems and are reformed such that community expectations are met, and the trust of the public restored. This is the last, best opportunity to do so before the spotlight fades and we return to more ordinary dynamics.

Finally, the CPC is mindful that the significance of accountability measures can be obscured when key offices are held by strong leaders operating in good faith and with the support of other influential players. We fully acknowledge and appreciate the strong leadership now in place at SPD, OPA, and the OIG. But the accountability system must also safeguard community interests when, as has often been true in the past, leaders in these positions are less skilled or less attentive to community concerns. The CPC's proposals were born out of many years of documented failures to adequate respond to negative community experiences with policing in Seattle, and we are required to champion a system that can stand the test of less inspired leadership. We are gravely concerned that the TA unravels this attempt, ratified by the City Council, to provide those protections.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission

Enrique Gonzalez, Co-Chair
Community Police Commission

Isaac Ruiz, Co-Chair
Community Police Commission

[16] *E.g.*, Dkt. No. 357 at 4.
[17] Dkt. No. 439.

EXAMPLES OF WAYS THE PROPOSED SEATTLE POLICE OFFICERS' GUILD (SPOG) CONTRACT AFFECTS POLICE ACCOUNTABILITY REFORMS

Seattle
Community
Police Commission

Prepared by the Community Police Commission

Examples of ways the proposed police officers' contract affects the police accountability system

The reforms incorporated into the Accountability Legislation adopted in 2017 to strengthen the accountability system were based on review of cases by independent experts, and the experiences of the public, where weaknesses in the system had been identified that undermined accountability. The Community Police Commission's concern is that the community advocated for those reforms in the Legislation, and understood that City leaders would prioritize this package in collective bargaining. If the terms of the collective bargaining agreement with the Guild mean those reforms will not be implemented or a weaker alternative will be substituted, it is important that there be a full and accurate explanation of what changes are being proposed and why, and what the impact will be. If it is not possible to have clarity about what rules are in effect, that is a problem per se for transparency and can compromise efforts to impose discipline in appropriate cases.

There are dozens of ways the proposed contract would in some way weaken the accountability system, many of which are difficult to explain succinctly and in non-technical terms. The following are just a few of the many examples we've identified. In addition, there are terms in the appendices to the agreement where the parties "reinterpret" the Accountability Legislation or agree it will not be implemented as written; terms where certain elements of the legislation are included but others not, so one can't tell whether that is an intentional alteration; terms where the drafting makes the impact unclear; and terms the parties agree to re-interpret, but then that language is not included. There is also no reference to accountability or to protecting the public interest anywhere in the stated purpose, so one can't use that as a foundation from which to understand intent.

What the Accountability Legislation Promised	Some of What the Proposed SPOG Contract Does
The legislation explicitly stated that the City's goal was to make sure the collective bargaining agreements with SPOG and with SPMA (the union for Lieutenants & Captains) allowed the new accountability law to be fully implemented: "For these reasons, the City shall take whatever steps are necessary to fulfill all legal prerequisites within 30 days of Mayoral signature of this ordinance, or as soon as practicable thereafter, including negotiating with its police unions to update all affected collective bargaining agreements so that the agreements each conform to and are fully consistent with the provisions and obligations of this ordinance, in a manner that allows for the earliest possible implementation to fulfill the purposes of this Chapter 3.29." **(Accountability Legislation - 3.29.510)**	Rather than ensuring that the contracts were brought into conformance with the new law, the proposed language in the contract weakens, takes away, or makes a reform less clear than what is in the law, or omits language in the ordinance in an area covered by the contract, and then states that if there is any conflict between the law and the contract (and even the appendices to the contract), the contract will prevail. This means that even if City does not formally amend the law, and the public expectation is that the law must be complied with, it will be the contract that must be complied with. **(Proposed SPOG Contract - Article 18.2 and Appendix E.3)** Note, by contrast, the SMPA contract says: "The results of the bargaining on the Accountability Ordinance are incorporated into Article 16 of the CBA between the parties. In accordance with this, the City may implement the Accountability Ordinance."
The standard for all misconduct findings, including those involving dishonesty, is "a preponderance," meaning an allegation can be sustained if the evidence shows it's more likely than not the alleged offense happened. Termination for an initial instance of dishonesty used to require a higher standard of "clear and convincing," but that was reformed in the	While the contract does set a preponderance as the standard for all misconduct findings, that step is undermined by the introduction of new language that there will be an "elevated standard of review" for any termination to be sustained on appeal if the offense could be stigmatizing to an officer seeking other employment. This could be virtually any offense, and

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legislation, by order of the Court, so that the standard for all discipline is the same. **(Accountability Legislation – 3.29.135 & the Federal court affirmed and so ordered in response to a City filing as part of the consent decree.)** Another reform goal was to not have to prove an officer was being *intentionally* dishonest (which is nearly impossible). Also, according to SPD policy, officers are required to be truthful and provide complete information in all communications. **(SPD Policy 5.001)**	effectively nullifies the preponderance standard for discipline by the Chief. The legislation had also removed arbitration as the way appeals are handled and provided for a clear standard of review by the independent body hearing appeals, so the introduction of a arbitrator's standard of review is connected to the re-introduction of arbitration as a dual appellate path, contrary to the legislation. The proposed contract also leaves in the old contract language requiring proof of intentionality for dishonesty, and the old contract language that limits when the officer must provide complete and honest information to times when officers are answering questions in administrative investigations. This contradicts the departmental policy with which all employees must comply, that officers are always required to be truthful and provide complete information - whether in reports, in testimony, when making a stop, etc. This has very wide implications given the tens of thousands of people detained and arrested with supporting police reports each year. (**Proposed SPOG Contract - 3.1)**
In the past, if a complaint was not filed within three years of the incident occurring, when video evidence later turned up, or a complainant who was frightened later came forward, or for any other reason the alleged misconduct came to light, no discipline could be imposed, regardless of how serious the misconduct was, unless it was criminal, could be proven the officer concealed it, or was due to litigation. The legislation reformed this by also removing any time limitation for dishonesty and Type III excessive force, and extending the time allowed for discipline to be imposed (the "statute of limitations") for all other types of misconduct to five years after the incident. **(Accountability Legislation – 3.29.420)**	Dishonesty and Type III Use of Force are no longer included as exceptions for which discipline can be imposed whenever the misconduct comes to light (no statute of limitations). The only exceptions remain what was in the contract before - criminal allegations, where the misconduct was concealed, or 30 days following an adverse disposition in civil litigation alleging intentional misconduct by an officer. **(Proposed SPOG -Contract 3.6.G)** (*And note that the contract does not say adverse to whom.*)
An important provision in the legislation stated that: "*OPA shall be physically housed outside any SPD facility* and be operationally independent of SPD in all respects. OPA's location and communications shall reflect its independence and impartiality, except that OPA shall be organizationally in SPD in order to ensure complete and immediate access to all SPD-controlled data, evidence, and personnel necessary for thorough and timely investigations and complaint handling." **(Accountability Legislation – 3.29.105.A) (emphasis added)**	The proposed contract requires that OPA interviews of SPOG members "shall take place at a Seattle Police facility, except when impractical." **(Proposed SPOG Contract 3.12.C.3)** The result is that, if the plain language of the contract is applied, OPA must interview officers away from their offices, which is ineffective and compromises the independence of the office. We've been told that SPOG has privately agreed that officers interviews will continue to be at OPA, but this, if true, both compromises transparency (actual practice contravenes the formally agreed rules of the road), and is a potential

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	"ace in the hole" on appeal, if an arbitrator finds that an officer's rights under the contract were violated when he or she was interviewed at OPA despite negotiated language to the contrary.
Under the old contract, if an OPA investigation was not completed within 180 days, discipline could not be imposed. In the legislation, the improvement made was that the 180-day limit is kept as a performance measure that OPA must report on each year to show that it is meeting that deadline, but discipline is no longer foreclosed if it takes OPA longer than 180 days to complete the investigation. This helps keep investigations timely without resulting in the public losing the ability to hold officers accountable for misconduct. Also, how the 180 days is counted, when it starts and stops, and when it must be extended, were clearly laid out in the legislation, to eliminate the frequent challenges and disputes about whether the 180-day timeline was met, as well as the need for OPA to ask the Guild's permission when an extension is warranted. **(Accountability Legislation – 3.29.130)**	Once again, no discipline can be imposed if the investigation takes more than 180 days. In addition, the way in which the 180 days is calculated is less clear; the 180-day clock again includes steps outside of OPA's control (the notice that must be sent to the employee within the 180 days is sent by the department), and OPA again has to ask the Guild for permission for extensions, which the Guild may refuse in light of their duty to represent their members (such refusal would probably be "reasonable" under the contract because it is to the benefit of the SPOG member being represented by the Guild). **(Proposed SPOG Contract - 3.6.B)**
The legislation also addressed the problem of the 180 days continuing to run even when the OPA administrative investigation has to be put on hold because of a related criminal investigation. If the criminal investigation takes months, that does not leave OPA much time to do its investigation. Under the legislation, if the 180-day requirement were retained, the 180-day time would be paused while the criminal investigation is ongoing. This was to help ensure both investigations have sufficient time to be done thoroughly. Cases involving possible criminal misconduct are often the most serious, so cutting short the investigative time OPA has does not serve the public well. **(Accountability Legislation – 3.29.130)**	There is no tolling (pausing) of the 180 day clock for OPA while a criminal investigation is underway. If the OPA administrative investigation has to be put on hold so as not to compromise a criminal investigation, OPA's 180-day clock continues to run; it is only paused during the time the case is being reviewed by the prosecutor. The result is that OPA may have insufficient time to investigate, whether or not charges are ever filed, in some of the most serious cases of potential misconduct. **(Proposed SPOG Contract - 3.7)** Compounding this concern is that the Proposed SPOG Contract does not go as far as the legislation in authorizing the OPA director to coordinate OPA investigations with criminal investigations external criminal investigators and prosecutors on a case-by-case basis. **(Accountability Legislation – 3.29.100.G; Proposed SPOG Contract – Article 3.7, App'x E.12)** This is identified as a reservation by OPA Director Andrew Myerberg in his letter to the City Council. Without limitation, the Proposed SPOG Contract gives SPD discretion to decide when an OPA investigation can proceed in parallel with a criminal investigation, which among other things may decrease the amount of time for an OPA investigation and decrease the ability of the OPA director to independently determine the course of the OPA investigation. Moreover, attempts by the OPA director to actively coordinate or investigate in parallel

Examples of ways the proposed police officers' contract affects the police accountability system

	may be considered improper "influence" under the Proposed SPOG Contract.
The officer or the Guild must fully disclose any relevant information of which they are aware during the OPA investigation. If they don't, they can't raise it later at the discipline Due Process Hearing or on appeal. This reform was to make sure OPA can conduct as thorough an investigation as possible, without information being withheld and then later raised at the hearing, grievance, or appeal as a rationale for arguing the Chief did not have "just cause" for her decision. **(Accountability Legislation - 3.29.130)**	There is no express provision prohibiting information from being disclosed for the first time at the discipline hearing or on appeal. **(Proposed SPOG Contract -Appendix E.12)**
OPA has always had a civilian director, but all the investigators, intake staff and supervisors were sworn. The legislation adopted the reform that the supervisors would be civilian, and investigators and intake staff would be a mix of civilian and sworn, as determined by the director, based on the best mix of skills and background needed to serve the public well. **(Accountability Legislation – 3.29.140)**	The proposed contract limits OPA's civilian investigators to two, limits how they get assigned, prohibits them from investigating allegations that might result in termination (or requires them to be paired with a sworn investigator to do – the language used in the contract is unclear.) So for the most serious allegations, this doesn't make OPA any more accessible for complainants who were not trusting of having sworn investigators, which was one of the goals of civilianization nor does it help with the challenges inherent in a sworn investigator having to recommend a colleague or superior be fired for misconduct. The contract also prohibits civilians from being dispatched to, or assigned as a primary unit to, investigate any criminal activity. This language may interfere with civilian personnel in OPA being involved at FIT call-outs and with Type III Use of Force. **(Proposed SPOG Contract - Appendix D & 7.10)**
Because there are some allegations where it does not serve the public well to have the employee continue on active duty and/or continue to get paid while the criminal and/or administrative investigations proceed, the reform adopted in the legislation provided the Chief greater authority to put an officer on leave without pay, if the officer has been charged with a felony or gross misdemeanor; if the allegations could lead to the officer being fired if they're found to be true; or if the Chief finds it necessary for the officer's or public safety, or security or confidentiality of law enforcement information. The officer will get back pay if reinstated, less any amounts representing a sustained penalty of suspension. **(Accountability Legislation - 3.29.420)**	The contract maintains limits on the Chief's authority. An officer can't be suspended longer than 30 days pending investigation unless they've been charged with a felony or gross misdemeanor, and that only if that gross misdemeanor involved moral turpitude or a sex or bias crime; or if the allegation could lead to termination if proven true. The Chief does not have the authority the legislation provided to suspend beyond 30 days if the Chief finds it necessary for the officer's or public safety, or security or confidentiality of law enforcement information. Given the length of time prior to filing of charges, this could well mean needing to return an officer to active duty who will later be charged with a serious crime, which damages public trust, especially in highly visible cases. **(Proposed SPOG - Contract 3.3)**
The old contract allowed officers to use vacation time or any other accrued time to be compensated when they had been disciplined with an unpaid suspension, for any suspension of less than 8 days. The legislation reformed this to prohibit the use of accrued paid leave	The proposed contract allows officers to use vacation time or any other accrued time balance to get paid during an unpaid suspension, as long as the suspension is less than eight days (which suspensions frequently are). **(Proposed SPOG - Contract 3.4)**

Examples of ways the proposed police officers' contract affects the police accountability system

regardless of the length of the suspension. This addressed the widespread public perception of officers being paid to sit at home as their 'accountability' for misconduct. **(Accountability Legislation – 3.29.420 A.8)**	
The legislation addressed the problem of destruction of personnel and OPA records by requiring that all of an officer's personnel and OPA files must be kept on record as long as the officer is still employed with the City, plus six years or as long as an action related to that employee is ongoing. The Ordinance also clearly defined what personnel records are, and for the sake of transparency, proving progressive discipline, and public records obligations, ensured the parties couldn't negotiate later removal of records of discipline imposed: "SPD personnel files shall contain all associated records, including Equal Employment Opportunity complaints, and disciplinary records, litigation records, and decertification records; and OPA complaint files shall contain all associated records, including investigation records, Supervisor Action referrals and outcomes, Rapid Adjudication records, and referrals and outcomes of mediations. Records of written reprimands or other disciplinary actions shall not be removed from employee personnel files." **(Accountability Legislation – 3.29.440)**	OPA files on an officer will only be retained based on their outcome. If an investigation finding is "sustained," the record will be kept as long as the Accountability Ordinance says it should. But, if the finding is "not sustained," it will only be kept for three years. The proposed contract also removes the specific requirements in the Ordinance for what must be retained and the prohibition on negotiating the later removal of records of sustained findings and discipline, which can impede the department's ability to prove appropriate progressive discipline and fair/uniform application, as well as frustrate public disclosure obligations. **(Proposed SPOG contract - 3.6.L)**
The legislation reformed the disciplinary appeals process in several ways, to make the system fair, timely, transparent, efficient and uniform. For example, eliminating other employees being involved in deciding appeals of discipline, and arbitrators who both the City and Guild must agree on, and instead having only the Public Safety Civil Service Commission (PSCSC) working with a professional, neutral Hearing Examiner decide appeals; having a standard of review that gives deference to the factual findings of the Hearing Officer, and requires the recommended decision and the final decision affirm the disciplinary decision unless the PSCSC specifically finds that the disciplinary decision was not in good faith for cause, in which case they may reverse or modify the discipline only to the minimum extent necessary to achieve this standard; having strict timelines for each phase from how much time the officer has to request a hearing to how quickly the ruling must be issued, so that appeals don't drag on for months or years; not allowing grievance procedures to result in any alteration of the discipline imposed by the Chief; and requiring all disciplinary hearings to be open	Other than maintaining some of the timelines, none of the other reforms to the disciplinary appeals process are retained in the contract. These reforms were all recommended based on extensive reviews of problems that had come to light with the City's disciplinary appeals processes in the highly publicized wave of disciplinary reversals in cases on appeal in spring 2014.

Examples of ways the proposed police officers' contract affects the police accountability system

to the public. **(Accountability Legislation - 3.29.420 and 4.08.105)**	
The legislation stated that the accountability system should work the same way for employees of all ranks. This was to ensure that the public and employees can rely on complaint, investigation, discipline, disciplinary appeals and related processes that do not treat higher ranking personnel differently than officers and sergeants. **(Accountability Legislation - 3.29.100 D.)**	There is no language in the contract that states that accountability policies and practices shall be applied uniformly regardless of rank or position, and the two contracts (SMPA for Captains & Lieutenants and SPOG for sergeants and officers) now have very different terms. This means different standards for different ranks. OPA will either have to establish two different systems for complaints and investigations involving employees from SPOG and employees from SPMA (different 180-day deadlines, different burdens of proof, different statutes of limitations, different approaches to investigations of possible criminal misconduct, different notice requirements, etc.) even if the employees are all involved in the same incident; or OPA will instead apply the more onerous approach in the SPOG contract to all employees, giving those concessions to management employees who have not bargained for them.
The legislation stated that the police department will establish a civilian office to manage secondary employment (off-duty work) of employees, providing appropriate oversight as well as independence from those who benefit from receiving off-duty work assignments. **(Accountability Legislation -3.29.430 (D))** The Interim Mayor then issued an Executive Order in the fall of 2017 and the department was to move forward by the beginning of 2018 with new secondary employment management and policies. The existing system has for years suffered from real and perceived conflicts of interest, has internal problems among employees competing for business, is technologically out of date, and lacks appropriate supervisory review and management. Among many reforms, the department was to create an internal civilian-led and civilian-staffed office to handle assignments for off-duty work; eliminate the practice of having the work managed outside of the department, often by current employees acting through their private businesses created for this purpose or through contracts between the employee and a private business; make clear that all policies still apply when employees are performing secondary employment work; and establish clear and unambiguous policies,	The contract states: "Employees covered by this Agreement shall be allowed to engage in off-duty employment subject to the same terms and conditions in effect on January 1, 1992" and "the City may reopen this Agreement on the issue of Secondary Employment. In the event the City does re-open, the Guild may re-open the Agreement on any economic issue that is directly related to and impacted by the change in Secondary Employment." This appears to step back from commitments made by the City regarding a new system providing for greater accountability in secondary employment as recommended by the OPA Auditor, City Auditor, Executive Director of the Seattle Ethics & Elections Commission, and the CPC. **(Proposed SPOG Contract - 7.9 & 21.5)**

Examples of ways the proposed police officers' contract affects the police accountability system

rules and procedures consistent with strong ethics and a sound organizational culture.	
Another improvement adopted in the legislation was to address the problem lack of transparency for the complainant, public and others if a sustained finding or discipline is changed at some point in the process after the employee's Due Process Hearing. The ordinance already required the Chief to send a written summary to the Mayor and Council if the Chief decides not to follow one or more of the OPA Director's written recommendations on findings following an OPA investigation. The legislation strengthened this in several ways: it must be done within 30 days of the Chief's decision on the disposition of the complaint (this was to address long delays that had occurred in the past). In addition to the Mayor, the statement must be specifically sent to the Council President and the Chair of the public safety committee, the City Attorney, the OPA Director, the Inspector General, and the CPC Executive Director. It must be included in the OPA case file and communicated to the complainant. It must also be included in OPA's public summaries. Lastly, to address the problems of findings or discipline resulting from an investigation being changed later in the process as the result of an appeal or grievance, whenever that happens, the City Attorney must send the statement to those recipients, with the same information provided to the complainant and the public. **(Accountability Legislation - 3.29.135)**	The proposed contract eliminates these transparency and timeliness improvements, most of which stemmed from the wave of controversial disciplinary reversals in spring 2014. "When the Police Chief changes a recommended finding from the OPA, the Chief will be required to state his/her reasons in writing and provide these to the OPA Director. A summary of the Chief's decisions will be provided to the Mayor and City Council." **(Proposed SPOG -Contract 3.5.G)**
The legislation set forth that if officers are to be in specialty units and be entitled to the higher pay that comes with that, their performance record and OPA history must meet certain standards. It also made clear that they could be transferred out if performance standards, including OPA history, were not maintained. "SPD shall adopt consistent standards that underscore the organizational expectations for performance and accountability as part of the application process for all specialty units, in addition to any unique expertise required by these units, such as field training, special weapons and tactics, crime scene investigation, and the sexual assault unit. In order to be considered for these assignments, the employee's performance appraisal record and OPA history must meet certain standards and SPD policy must allow for removal from that assignment if certain triggering events or ongoing concerns mean the employee is no longer meeting	The proposed contract requires that a transfer based on inadequate performance may only occur if the department has documented a repetitive performance deficiency and informed the employee, and the employee has had a reasonable opportunity to address the performance deficiency, normally no less than thirty (30) and no more than ninety (90) days. This doesn't align with the goal of allowing for removal from a specialty assignment if certain triggering events, including misconduct or other conduct that warrants transfer. It also does not address the required standards for the initial appointment to a specialty unit. **(Proposed SPOG Contract - 7.4.G & 7.4.4)**

Examples of ways the proposed police officers' contract affects the police accountability system

performance or accountability standards." **(Accountability Legislation - 3.29.430)**	
The legislation requires all other agreements between the City and the Guild must be made publicly available and incorporated in the contract, or they must be considered no longer in effect. The purpose of this improvement was to address a past problem that there have been other terms and conditions imposed by those separate agreements (often made to resolve a grievance or unfair labor practice) that also impact the public, but they are not publicly known. **(Accountability Legislation - 3.29.460)**	The contract appendices list many agreements that haven't been made publicly available and won't be, presumably, until after the contract is approved. Only their titles are listed, not their terms, so it is impossible for the public to know in what ways they additionally affect how the accountability system works. **(Proposed SPOG Contract - Appendices E.12 & F)**